

AB 982 Public Advisory Group

Coastal Hearing Room
Cal/EPA Building
1001 I Street
Sacramento, California

Meeting Summary

Tuesday, July 23, 2002

Convene Meeting: Co-Chairs Craig Johns and Linda Sheehan opened the meeting at 9:08 a.m. and declared a quorum.

Introduction: Steve Ekstrom, PAG facilitator, asked members to introduce themselves. He gave a description of the agenda noting that a central purpose of the meeting was to get PAG's input on the issues cited in a staff report that need to be addressed for the development of the listing/de-listing policy.

Linda Sheehan also noted a few items: Dave Paradies will be serving as an alternate for Barbara Vlamis, and Leo O'Brien (not in attendance today) of San Francisco Bay Keepers, will replace Jonathan Kaplan on the PAG. Linda also read the environmental caucus' position on Waste Discharge Requirement waivers. Linda submitted the following text of what she read for the minutes:

“We the members of the Environmental Caucus of the AB 982 Public Advisory Group, strongly support controls on all discharges that may impact the health of California's waters. We particularly support the development of effective programs to replace waste discharge requirement waivers that are due to expire on January 1, 2003 pursuant to SB 390. These exemptions from the state's clean water act have caused many of the impairments that the state is now struggling to identify, prioritize, and clean up. We urge the state to vacate existing waivers by the January 1st statutory deadline and replace them with requirements that will protect California's waters from further degradation and ensure that we work expeditiously toward achieving water quality standards in all impaired waters. We would welcome the opportunity to work closely with the Regional Boards, State Board, and the regulated community to develop a workable and effective interim and longer term programs to replace these waivers.”

Summary of the April 8, 2002 meeting: The summary was accepted as mailed.

Update on the 2002 Section 303(d) List. Craig J. Wilson mentioned that the draft report on the 2002 Section 303(d) list was prepared in early April, followed by hearings. The Water Board received 190 letters and 360 pages of testimony, with a total of 1526 comments. Volume 4 of the report will contain the Board's written response to comments. Next steps include presenting the report to the Board in September, a

September workshop, and final submittal to USEPA in October. If data re-evaluation is needed, the submittal of the Section 303(d) List will be delayed.

A member asked if the PAG can have a copy of the Water Board's comments on U.S. EPA's CALM Guidance – the answer was yes.

Concepts for the Listing/De-Listing Policy: Craig Wilson introduced the document mailed in advance to the PAG that delineates issues that need to be addressed. He pointed out that these issues would form the basis of the listing/de-listing policy. Regarding the schedule, following receipt of feedback in July, a functional equivalent document will be prepared by the end of October 2002 and released in November or December. Hearings will likely be held in the spring of 2003.

The PAG decided to begin with a discussion of the issue outlined on pages 45/46, "Forming the California List of Surface Waters Not Meeting Water Quality Standards."

PAG comments included:

- The environmental caucus is not comfortable with having more than one list; a separate monitoring list is unnecessary.
- One list, if done well, is OK with the regulated community, other lists may be good management tools.
- Perhaps having one list with three or four parts is OK.
- More lists do not accomplish more clean up of the waters.
- Region 5 has very little monitoring right now, and this is of major concern, as is funding for the monitoring.
- A "reasonable" time frame for a monitoring list seems like a bad idea, don't go reasonable go aggressive.
- Pick a direction, be clear, make it defensible and go with what is right and leave it for discussion.

Overall summary of the discussion supported by both caucuses: a simpler, more condensed list is advisable. By developing several lists, it gives the impression that staff is trying to please too many parties. Staff should pick a direction and support it, even if it means not everyone will be satisfied. The 303(d) list should be the list that requires TMDLs for water bodies that are impaired.

The PAG then directed its attention to page 2 of the handout, "Scope of the Listing/De-listing Policy." Does the list get revised as new data is available? How does one determine if a listing is justified? When it is determined that a water body should be listed or de-listed? The environmental caucus is opposed to more and more reviews of the list, believing that an initial review at the problem statement phase of a TMDL should be sufficient. The regulated community is comfortable with doing an assessment at the problem level stage, but there should also be other ways to further assess.

PAG comments included:

- The regulated community suggests review of the entire 1998 303(d) List once the policy is in place, the list (98') should be gone through, not just carried over.
- We must apply the policy to the list even if it's incrementally, otherwise the policy has no integrity. The policy will only be as good as the list.
- The environmental community feels that resources spent on re-assessing and reviewing waters on the 1998 List would be wasteful. Resources that are already limited should be directed towards cleaning water bodies.
- There are more waterbodies listed with every cycle, with the waters always getting dirtier. Whatever policy is in place there will always be more waterbodies listed than de-listed. The waters aren't getting cleaner.
- We just can't keep revisiting the waters that were listed in the past, we need to move forward. The waters that were listed inappropriately is a small portion of the waters listed appropriately that are impaired.
- Water bodies that are clean shouldn't be listed. There are already situations and times when the list should be reviewed such as; during TMDL development, triennial review period, and the interim permitting stage.

Staff pointed out that staffing limitations preclude a full review of the old list. It was suggested by a PAG member that perhaps the PAG should develop funding suggestions for assessing the old list.

After much discussion, the PAG did not achieve any consensus points on these issues.

Public comment: just before the lunch break the public was invited to comment.

- Regarding the staff limitations on assessing waters on the old list, perhaps they could do a "practice" reassessment, e.g., assess 5 water bodies, and see what the impact is. This could then be extrapolated out to determine the impact of a broader reassessment.
- To assess waters on the old list, get outside funding from a third party. This wouldn't impact staff and wouldn't hold up TMDL efforts.

Comments from the Executive Director: Celeste Cantu addressed the PAG about budget issues. The Water Board's top priority continues to be TMDLs. To date, the monitoring budget is not affected by proposed budget cuts, and no lay-offs are expected. If cuts are required, the Water Board will prioritize actions by threat to water quality so that the waters of greatest concern will still receive attention.

Concepts for the Listing/De-Listing Policy (continued): Discussion followed after the lunch break. Staff asked the PAG to discuss the issue on page 18, “How should numeric water quality standards be interpreted?”

PAG comments included:

- Binomial and best professional judgment, and other judgments, should be used.
- There should be consistency across regions.
- Use existing criteria.
- Take magnitude into consideration.
- There should be high confidence to get on or off the list.
- Regional boards should not set confidence levels.

Important note: because the PAG was unable to comment on all the issues in the staff report, there was concern that a different method of getting input was needed. After discussion it was agreed that the environmental and regulated communities would meet separately to develop their views on the issues and each would submit their written comments to staff by August 23.

Legislative Report: Laura Shape updated the PAG on the development of the annual report to the legislature. She noted that the report would include a list of TMDLs completed, and those that are being worked on. Narratives would accompany each. Laura also noted that the draft report would be available for PAG comment in late September or early October.

Comments from the PAG included:

- Review SWAMP rotating basin strategy and speculate when you might be able to use the data. Compare the real cost to the 2002-03 budget.
- Articulate the concern that the legislature not cut monitoring funding that the Water Board and PAG had strongly advocated for.
- Appreciation to staff for including some of the PAG’s previous concerns in the legislative report, e.g., an accounting of TMDLs, schedules showing deadlines, and including monitoring information.

Update on SWAMP: Del Rasmussen provided the update noting that 2001-02 represented a strong coordinated effort of the regional boards. They had a \$3.5 million budget in which 95% of data collection was completed and 75% of lab analyses were completed. Since 2001, 400 water bodies have been sampled in 250 watersheds. The Scientific Planning and Review Committee (SPARC) should be issuing its report soon.

The projected budget for FY 2002-03 is \$3.35 million, which represents a \$250,000 reduction in monitoring (\$500,000 reduction total, including SMP, TSMP, and Toxicity Testing).

PAG members expressed strong concern for the cuts:

- The cut was made without consultation with the PAG
- PAG lobbied hard for monitoring monies, and should know in advance if they are slated for cuts.
- Why were these cuts proposed if TMDLs represent a top priority program?

Other PAG comments included:

- New and better monitoring is happening.
- The lab contracting process is problematic; the PAG should write a letter to the Water Board about improving the contracting process.

Public Comment: One person commented that they appreciated PAG's concern for the possible cuts to the monitoring budget. The trend in funding monitoring should be up, not down.

Wrap-up and Next Steps: It was agreed that the next meeting of the PAG would be on October 22, 2002 in Sacramento.

Adjournment: The Co-Chairs adjourned the meeting at 4:00 p.m.